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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. **1089** 52

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,

Petitioner,

v.

THE UNITED STATES.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS, DIS-
TRICT OF COLUMBIA, AND BRIEF IN
SUPPORT THEREOF.**

SIMON LYON,

R. B. H. LYON,

Counsel for Petitioner.

INDEX.

	Page
Petition for Writ of Certiorari	1
Question Presented	1
Reasons for Granting the Writ	1-2
Brief in Support of Petition	3
Opinion Below	3
Jurisdiction	3
Statutes Involved	4-6
Statement of Case	6-10
Specification of Errors	10
Argument	11-17
Conclusion	18

TABLE OF CASES CITED.

Jones, Collector, v. Better Business Bureau of Oklahoma City, Inc., 123 Fed. 2d 767 (C. C. A. 10th, 1941) (34 Fed. Supp. 573, decided July, 1940)	2, 11, 12, 14
International Reform Federation v. District Unemployment Compensation Board, 76 U. S. App. D. C. 272, 131 Fed. 2d 337	14, 15
W. Trinidad, Insular Collector, v. Sagrada Orden De Predicadores, etc., 263 U. S. 578, 68 L. Ed. 458.	15
Hassett, Collector, v. Associated Hospital Service Corporation of Massachusetts, 125 Fed. 616.	15
Slocum et al. v. Bowers, 15 Fed. 2d 400-403.	15
St. Louis Union Trust Company et al. v. Burnett, 59 Fed. 2d 922-9	15
Missouri Historical Society v. Academy of Science, 94 Mo. 459, 8 S. W. 346	15

STATUTES INVOLVED.

Sec. 811(b) (8), c. 531, 49 Stat. 620 (42 U. S. C. 1940 ed., Sec. 1011)	1, 2, 4, 5, 10
Act of February 13, 1925, c. 229, p. 1, 43 Stat. 938.....	3
Act of March 3, 1901, 31 Stat. 1283, c. 854, Sec. 599, p. 4, 6, 10, 13	
District Unemployment Exemption Statute, Sec. 1, par. B, sub-Chap. 1, Act of August 28, 1935, 49 Stat. 947	5, 6

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OCTOBER TERM, 1945.

No. _____

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,
Petitioner,

v.

THE UNITED STATES

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE UNITED STATES.**

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your Petitioner, the Better Business Bureau of Washington, D. C. Inc., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals, District of Columbia, in the above entitled action.

QUESTION PRESENTED.

Was the Petitioner, the Better Business Bureau of Washington, D. C. Inc., a corporation organized and operated exclusively for educational or scientific purposes within the meaning of the exemption of the Federal Social Security Act, known as Section 811(b), (8), c. 531, 49 Stat. 620, (42 U. S. C. 1940 ed., Sec. 1011)

REASONS FOR GRANTING THE WRIT.

1. The decision of the Appellate Court below in holding that the Petitioner is not entitled to the exemption as an organization organized and operated exclusively for educational or scientific purposes is in direct conflict with the decision of the Circuit Court of Appeals for the 10th Cir-

cuit in the case of *Jones, Collector, v. Better Business Bureau of Oklahoma City, Inc.*, 123 Fed. 2d 767 (C. C. A. 10th, 1941), and other following decisions.

2. The question involved is a novel one in that the decisions of the Circuit Court of Appeals for the 10th Circuit (*supra*), and in the instant case of the United States Court of Appeals, District of Columbia, are the only two decisions dealing directly with this same subject matter at this time, to the best of your Petitioner's knowledge and belief, the question involving the exemption clause of the Federal Social Security Act, Section 811(b) (8), c. 531, 49 Stat. 620, never having been presented to the Supreme Court of the United States for consideration and decision.

3. We contend it is necessary and of general importance that this Federal Statute be clearly and distinctly construed as there are a number of institutions involved and interested in this subject matter, there being approximately eighty-five (85) Better Business Bureaus operating in exactly the same manner throughout the United States, and their status would be determined by such a construction of the statute involved.

4. It is contended that this is a case also of public importance and that as the public is directly involved in its dealings with the Petitioner and other similar institutions throughout the United States, and it therefore necessarily requires that a proper judicial determination of this case be made by this high court.

Wherefore, it is respectfully submitted that this petition for writ of certiorari to review the judgment of the United States Court of Appeals, District of Columbia, in this case should be granted.

Dated at Washington, D. C., March 29, 1945:

SIMON LYON,

R. B. H. LYON,

Attorneys for Petitioner.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1945.

No.

BETTER BUSINESS BUREAU OF WASHINGTON, D. C., INC.,

Petitioner,

v.

THE UNITED STATES.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI.**

OPINION OF THE COURT BELOW.

The Opinion of the United States Court of Appeals, District of Columbia, promulgated February 19, 1945 (R. 52-55).

JURISDICTION.

*The judgment of the Court below was entered on February 19, 1945 (R. 56). The jurisdiction of this Court is invoked under the Act of February 13, 1925, c. 229, p. 1, 43 Stat. 938.

STATUTES INVOLVED.

District of Columbia Incorporation Act of Appellant, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599.

The appellant, the Better Business Bureau of Washington, D. C. Inc., was organized under the Laws of the District of Columbia, (Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599), on the 10th day of August, 1920, commonly known and referred to as articles concerning "benevolent, charitable, educational, literary, musical, scientific, religious, or missionary program, the material part of which reads as follows:

"SEC. 599. Certificate.—Any three or more persons of full age, citizens of the United States, a majority of whom shall be citizens of the District, who desire to associate themselves for benevolent, charitable, educational, literary, musical, scientific, religious, or missionary purposes, including societies formed for mutual improvement or for the promotion of the arts, may make, sign, and acknowledge, before any officer authorized to take acknowledgements of deeds in the District, and file in the office of the recorder of deeds, to be recorded by him, a certificate in writing, in which shall be stated—

First. The name or title by which such society shall be known in law.

Second. The term for which it is organized, which may be perpetual.

Third. The particular business and objects of the society.

Fourth. The number of its trustees, directors, or managers for the first year of its existence."

Social Security Act Exemption Clause, 49 Stat. 620, c. 531, otherwise known as Sec. 811.

"Sec. 811: When used in this title—

"(b) The term 'employment' means any service, of whatever nature, performed within the United States by an employee for his employer, except—

"(8) Service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

Internal Revenue Code:

SEC. 1426. DEFINITIONS.

When used in this subchapter—

(b) *Employment*.—The term 'employment' means any service of whatever nature, performed within the United States by an employee for his employer, except—

(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (26 U.S.C. 1940 ed., Sec. 1426)."

District Unemployment Exemption Statute, Sec. 1, par. B, sub-chap. 1, Act of August 28, 1935, 49 Stat. 947.

The exemption contained in the Federal Social Security Act, *supra*, appears to be identical in terms with the exemption contained in the District of Columbia Unemployment Compensation Act of August 28, 1935, 49 Stat. c. 794, § 3, and amendments thereto, the material part of which reads as follows:

"••• (b) The Term 'employment' means any service, of whatever nature, including employment in interstate commerce, performed after December 31, 1935, within the United States, by any individual under any contract of hire, oral or written, express or implied, so long as the greater part, as determined by the Board under regulations prescribed by it, of the service performed under such contract is performed within the District, except—•••

“ * * * (7) service performed in the employ of a corporation, community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; * * * ”.

STATEMENT OF CASE.

The agreed statement of facts filed in this case shows that the appellant, the Better Business Bureau of Washington, D. C., Inc., was organized under the Laws of the District of Columbia, (Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599), on the 10th day of August, 1920, commonly known and referred to as articles concerning “religious, educational and benevolent corporations.” The purposes set forth in the Articles of Incorporation are:

“ * * * the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as ‘An Act to prevent fraudulent advertising in the District of Columbia.’ ” (R. 12-13).

The Bureau was not organized for profit and it has no shares of stock. The operation of the Bureau does not inure to the benefit of any private shareholder or individual,

it pays no dividends, and makes no refunds or disbursements to any person interested. Information that it has compiled is available to any one, and it makes no charge for any information furnished. There is no discrimination between members or non-members. It urges the public "Before you invest, investigate," and anyone who takes the trouble to inquire may have all the information that the Bureau has available or can obtain. (R. 13-14)

The money to carry on the work of the Bureau is raised by voluntary subscription or membership fees from interested people. There is no fixed membership fee. One individual or company may contribute \$25.00, while another may contribute \$100.00 or more. Its budget for the years of 1936 to 1941 inclusive differed in various amounts for its complete operation under its charter. The entire sum of the aforesaid budget was raised by contributions and none of it was defrayed by fees or charges made in connection with the service that it rendered to the various individuals, companies or people who took advantage of the slogan "Before you invest, investigate." (R. 13-14)

Its directors are elected annually from the membership, consisting of prominent men from all walks of life. Its officers are elected by the directors. They have nominal duties and are paid no salary. The only paid employees are the Manager or Director and a limited number of employees serving under him. This is an action to recover the amount of taxes paid under the Federal Social Security Act. In carrying out its charter purposes, the Bureau's work is divided roughly into five subdivisions. These are (1) Fraud Prevention, (2) the fighting of Fraud, (3) the elevation of business standards by education thereof, (4) the education of the consumer as a buyer, and (5) furnishing information and aid to various agencies of the Governments of the District of Columbia and the United States. (R. 14)

(1) In the Fraud Prevention work, the purpose is to educate and warn them of plans and schemes of various

types of swindlers. Most of this education is by answering specific inquiries. The Bureau shows the Public what information it has and when the facts are made available to the prospective victim the swindle usually appears rather obvious to even an uneducated person. A substantial part of this fraud prevention work has been in cooperation with newspapers and radio networks who, when the Bureau shows them that the prospective advertiser is a swindler, refuses the advertisement, thus limiting materially the opportunity of the swindler to contact his prospective victim. (R. 14)

(2) In Fraud fighting, general and abstract fraudulent practices are brought to the attention of the public. The education is carried on through newspaper stories, radio talks, bulletins and posters. These are addressed to the public in general and are not in any way limited to the members. In many instances schemes are killed and do not have a chance to occur here because the public were educated to these schemes. (R. 15)

(3) The third class of work which the Bureau attempts to do is the elevation of business standards. The purpose of this is to teach merchants that applying the doctrine of caveat emptor is not good business. In educating merchants that misleading advertising, extravagant claims and price comparisons are not good business, the Bureau, not representing any merchants and having no axe of its own to grind, is in a peculiarly advantageous position in talking with the merchants. The education of merchants to raise their business standards and ethics may be by meetings attended by "chain stores, independents, and every type of merchant" where the follies of dishonest or at least unethical merchandising are pointed out and where a constructive, voluntary plan of honest advertising is advocated, and which frequently results in the merchants adopting "a program and the elimination of comparative prices, all in the interest of public confidence." (R. 15)

(4) The Bureau takes the public as its pupils in its fourth class of educational work. The Bureau believes that the public as a consumer has as much interest in our economic scheme as business men have, and that the public and the business man should work together for a better understanding of each other's problems. This education comes through talks by the manager and assistant manager to groups of individuals, and it is also carried on through the Bureau's bulletins and by newspaper stories and radio addresses.

The consuming public must be educated against fraudulent practices and must be educated to inquire from some reliable, disinterested source before its money is spent or before it becomes involved in any unknown or doubtful proposition. If the consuming public spends its money unwisely, it is a loss not only to the consumer, but to everyone else. (R. 15-16)

(5) In addition to the four primary educational purposes, the Bureau cooperates with the various governmental agencies interested in law enforcement, as follows: United States Federal Trade Commission, United States Post Office, Department of Justice, and certain War Emergency Agencies, etc., Health Department, License Bureau, Insurance Department, etc., of the District of Columbia.

This work does not involve any duplication of these Agencies' services. The Bureau is in an excellent position to give proof to those agencies of schemes which they will want to know about in order to take immediate action to protect the public. The Bureau has nothing whatever to do with the enforcement of the law; that is the duty of the above mentioned various government agencies.

There are some eighty-five other Better Business Bureaus in the United States. The purpose of each Bureau is very much the same and each Bureau exchanges information with other Bureaus, but each is independently operated by local citizens and all the expenses are likewise defrayed by local citizens.

This appellant, the Bureau, has never indulged in any political activities nor does it have anything whatsoever to do with same. (R. 16)

The appellant's position is that it is an educational institution within any commonly accepted definition of "educational" and was and is exempt from taxation under the Federal Social Security Act, Chap. 531, 49 Stat. 620, Sec. 811.

The Appellate Court below refused to accept the Petitioner's contention and accordingly held that it was an organization organized and operated exclusively for educational or scientific purposes within the meaning of the exemption contained in Section 811 of the Federal Social Security Act; *supra*, and therefore not entitled to the relief it sought, hereby subjecting it to the payment of the Social Security Taxes in question.

SPECIFICATION OF ERRORS.

The United States Court of Appeals erred:

1. In rendering judgment for Respondent (appellee in lower court), by holding that your Petitioner is not entitled to the exemption as an organization organized and operated exclusively as an educational or scientific institution within the meaning of Sec. 811 (b) (8) c. 531, 49 Stat. 620 of the Federal Social Security Act approved August 14, 1935, as amended. (R. 49)

2. The decision of the lower court is contrary to the agreed facts, which proves clearly that the Petitioner is an institution organized and exclusively operated for educational or scientific purposes, and was properly incorporated under the Statute of the District of Columbia, created for institutions of this character, Act of March 3, 1901, 31 Stat. 1283, c. 854, § 599 (Brief 6).

3. The Record will show that the Petitioner has met every requirement of the exemption contained in the Federal Social Security Act above cited and therefore entitled to the relief it seeks (R. 12-16).

ARGUMENT.

I.

The decision of the appellate court below is holding that the Petitioner is not entitled to the exemption as an organization organized and operated exclusively for educational or scientific purposes is in direct conflict with the decision of the Circuit Court of Appeals for the 10th Circuit in the case of *Jones, Collector v. Better Business Bureau of Oklahoma City, Inc.*, 123 Fed. 2d 769 (C. C. A. 10th, 1941), viz:

" . . . While the general rule is that tax-exempt statutes are to be construed strictly in favor of the government, the rule does not apply to exemption statutes of the character here involved. Such a statute should be liberally construed so as to further rather than hinder its beneficent purpose. The purpose of this exemption is to encourage religious, charitable, scientific, literary, and educational associations not operating for the profit of any private shareholder or individual.

Education is defined in Webster's New International Dictionary, Second Edition, as follows: 'The totality of the information and qualities acquired through instruction and training, which further the development of an individual physically, mentally, and morally.' It was defined by the Supreme Court of Nebraska in *Ancients, etc. S. R. of Freemasonry v. Board of County Commissioners*, 122 Neb. 586, 241 N. W. 93, 96, 81 A. L. R. 1166, as follows: 'Furthermore, lexicographers and the courts agree in defining 'educational' as pertaining to 'education.' The latter word taken in its full sense is a broad, comprehensive term and may be particularly directed to either mental, moral or physical faculties, but in its broadest and best sense it embraces them all, and includes not merely the instructions received at school, college or university, but the whole course of training—moral, intellectual, and physical. . . .

" . . . It is a well-known fact that educators are now advocating high school training on the subject of intelligent buying.

Here, the purpose of the Bureau is to educate the public concerning fraudulent schemes and practices

and to enable the members of the public to avoid such practices and to become better and more intelligent buyers, and to inculcate higher ethical standards in business practices and advertising. Business intercourse is an important activity of everyday life. The inculcating of higher standards and of business ethics on the part of the merchant, inducing the operators of advertising mediums to insist on honest advertising, acquainting the public with fraudulent schemes and practices, and informing the individual how he may avoid such practices and buy more wisely, while within a limited field, are, in our opinion, educational in character.

We, therefore, conclude that the Bureau is within the exemption, and that the judgment below should be affirmed.''. (Italics ours.)

An examination of the records in the *Jones Case* (See Transcript of Record p. 4, 70-72); and that of the Petitioner's (R. 12-16) will show that the activities of these two organizations are identical and that the powers of these respective corporations under which they operated are the same.

Substantiating this contention, we cite in addition to the functions or activities of these two corporations, their respective powers, under which they carried on their activities; the first being that of the *Better Business Bureau of Oklahoma City*, viz:

"To inform and to educate the public by various forms of publicity or otherwise, as to the difference between honest and legitimate advertising and that which is misleading, dishonest, and improper in order to create public confidence in honest and legitimate advertising and honest and legitimate business, and to prevent the public from being misled by persons using unfair advertisements or unfair business methods.

"By all proper means to educate and inform merchants, manufacturers, and other business men as to honest, fair and legitimate advertising and business methods and the discouragement of unfair competition and unfair dealings with the public * * *"

(See: Transcript of Record, p. 4, *Jones case, supra.*)

and powers contained in Petitioner's Articles of Incorporation: (

" * * * the object for which it is formed is for the mutual welfare, protection and improvement of business methods among merchants and other persons engaged in any and all business or professions and occupations of every description whatsoever that deal directly or indirectly with the public at large, and for the educational and scientific advancements of business methods among persons, corporations or associations engaged in business in the District of Columbia so that the public can obtain a proper, clean, honest and fair treatment in its dealings or transactions with such merchants, tradesmen, corporations, associations or persons following a profession and at the same time protecting the interest of the latter classes of businesses to enable such as are engaged in the same to successfully and profitably conduct their business and for the further purpose of endeavoring to obtain the proper, just, fair and effective enforcement of the Act of Congress approved May 29th, 1916, otherwise known as 'An Act to prevent fraudulent advertising in the District of Columbia.' "

It was under the above mentioned powers under which these two organizations were operated exclusively as an educational or scientific institution during the taxing period and their activities were properly within the scope of such powers.

The appellate court erred in holding that Petitioner was a civic institution only and not an educational institution, which seems to be one of the principal reasons for giving judgment in favor of Respondent. This same theory was advanced by the Government before the appellate court for the 10th Circuit in the *Jones case, supra*, and that Court did not give any weight to this argument for the reason it decided, among other things that the Better Business Bureau could be not only a civic institution but also one organized and operated exclusively for educational or scientific purposes. Further, it is a public fact that many civic

institutions do not have the character and scope of operations such as possessed by the Petitioner. The latter has no function as a civic institution (if you would call it such) except to educate the merchant or business man and the public, in order to attain its object, which is done by lectures, radio, conferences, meetings and the printing and distribution of a very large amount of literature. While it may be regarded in a sense as a civic institution, nevertheless the facts prove that it is also clearly an organization organized and operated exclusively for educational purposes as hereinbefore stated.

The narrow and limited construction of the lower court in arriving at its decision is also in conflict and contrary to the principle adopted by the District Court in the *Jones case*, 34 Fed. Supp. 573, decided July, 1940, viz:

" * * * Educational training is not confined to colleges, universities or even the public schools but consists, in the broadest sense, of acquiring information or inspirational suggestions which cause the individual to think and act along proper lines. Certainly, the teaching of honesty, integrity, and truthfulness is the very highest objective of an education." * * * Approved by U. S. Circuit Court of Appeals, 123 Fed. 2d. 767.

The decision in the instant case is also in conflict with the rule laid down by the appellate court in the case of *International Reform Federation v. District Unemployment Compensation Board*, 76 U. S. App. D. C. 272, 131 Fed. 2d 337, on the construction of the exemption clause contained in the District of Columbia Unemployment Act (B. 5-6) which is identical with the exemption contained in the Federal Social Security Act (B. 4-5), as it adopted a more liberal construction with respect to the definition of charitable, educational, and scientific institutions. In this case the court held *inter alia*

" * * * Charity in its legal sense comprises trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion and

trusts for other purposes beneficial to the community not falling under any of the previous heads. . . .

The lower court in differentiating between the case at bar and the *International Reform Federation case, supra*, lost sight of the fact that there are numerous forms of educational institutions due to the march of time and because the appellant in the *International Reform Federation case, supra*, was different in its character from that of the Petitioner, the reasoning in arriving at its decision in the *International Reform Federation case* could not be applied to the character of an institution such as that of the Petitioner, when in fact today there are numerous kinds of educational institutions operating which are not religious or otherwise charitable in their very nature, but serve the public for the advancement and benefit as its only object. This latter class have received the benefit of a favorable construction of exemption acts such as in the above case and such rule of construction has been followed by numerous courts throughout the country, among which we cite the following in addition to the *Jones case* and *Petitioner's case, supra*:

W. Trinidad, Insular Collector, v. Sagrada Orden De Predicadores, etc., 263 U. S. 578, 68 L. Ed. 458.

Hassett, Collector, v. Associated Hospital Service Corporation of Massachusetts, 125 Fed. 616.

Slocum et al. v. Bowers, 15 Fed. 2d 400-403.

St. Louis Union Trust Company et al. v. Burnett, 59 Fed. 2d 922-9.

Missouri Historical Society v. Academy of Science, 94 Mo. 459, 8 S. W. 346.

Southeastern Fair Association v. U. S., 52 Fed. Supp. 219.

Oklahoma State Fair and Exposition v. Jones, Collector of Internal Revenue, 44 Fed. Supp. 630-2.

II.

The Question involved appears to be a novel one.

The Petitioner operating as a Better Business Bureau, as well as other Better Business Bureaus throughout the United States, are organizations operating for the education of business men of every character and the public and are, we might say, organizations created under the corporation laws throughout the United States of recent time as the result of the evolution of business.

These institutions have all been created within the past thirty (30) years, and therefore their rights under the law, so far as the imposition of duties or taxes, should be construed in the legal manner such as has been prescribed by the appellate courts in the case of *Better Business Bureau v. Jones, Collector*, and *International Reform Federation v. District Unemployment Compensation Board, supra*.

Congress has met this modern method by broadening the exemptions in the Federal Social Security, Unemployment and other taxing laws as will be readily perceived by the exemptions contained in the above mentioned laws, hereinbefore set out (B. 4-6).

Further we contend that the exemption clause of the Federal Social Security Act in question (which is legislation of modern times and not an old act) here does not contain any ambiguity. This Court has decided many times that an adverse construction of a Federal Act by any governmental agency shall not prevail where the Statute in question speaks clearly, such as in the case at bar, therefore we think that the appellate court erred in its decision denying this petitioner the relief it seeks, in holding that such adverse departmental construction shall prevail. This high court has on many occasions, where such a point was involved, set aside such adverse construction as being unreasonable incorrect, and unfair to the taxpayer. The decisions of this court in favor of the litigant seeking relief from such adverse departmental construction are clear and numerous

and it would be only taking up unnecessary time of this court to cite them. Especially is the decision of the lower court in this case on this point in error in view of the clearness of the statute in question giving the relief sought by the Petitioner, which relief we think is justified by the facts in this case.

III.

The case involves a matter of general importance.

The construction of this Federal Statute by this high Court is necessary as it is a matter of general importance that the same be clearly and distinctly construed so that the ambiguity created by the conflicting decisions of the appellate courts in the *Jones* and *instant* case be eliminated as there are a number of similar institutions involved and interested in this subject matter throughout the United States, there being approximately eighty-five (85) Better Business Bureaus operating in exactly the same manner throughout this country and their status should be clearly and definitely determined by a proper construction of the Statute involved.

IV.

It necessarily follows that this case is of public importance.

It is contended that this is a case also of public importance and that the public interest and that of the employees of these institutions are directly involved in the transaction of business with the Petitioner and other similar institutions throughout the United States and it therefore urgently requires that a proper judicial determination of this case be made by this high court.

CONCLUSION.

For the following reasons, it is respectfully submitted
that this Petition should be granted.

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